

Exhibit 65

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.

Civil Action No. 07-10248-PBS

Exhibit to the July 24, 2009, Declaration of James J. Fauci
In Support of Plaintiff's Motion for Partial Summary Judgment and
In Opposition to the Roxane Defendants' Motion For Partial Summary Judgment

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO:) Judge Patti B. Saris
United States of America,)
ex rel. Ven-A-Care of the) Magistrate Judge
Florida Keys, Inc., v.) Marianne B. Bowler
Boehringer Ingelheim Corp.,)
et al., Civil Action No.)
07-10248-PBS)
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Videotaped Deposition of COLIN CARR-HALL,
at 219 South Dearborn Street, Chicago,
Illinois, commencing at 9:08 a.m. on Friday,
December 12, 2008, before Donna M. Kazaitis,
RPR, CSR No. 084-003145.

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A P P E A R A N C E S

FOR THE UNITED STATES:

U.S. DEPARTMENT OF JUSTICE

CIVIL DIVISION

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1 DEA gives various narcotics or other drugs that
2 they want to have tighter control on.

3 Q. Is that also known as a controlled
4 substance?

5 A. Yes, it is.

6 Q. Ipratropium Bromide?

7 A. Yeah, Ipratropium Bromide is an
8 anticholinergic.

9 Q. What does that mean in English?

10 A. Sorry.

11 It's primarily for people who have
12 COPD, chronic obstructive pulmonary disease.

13 Q. Oramorph SR, what does that do?

14 A. Oramorph SR is a sustained release
15 morphine-based product.

16 Q. Is that another controlled substance?

17 A. Yeah. I think Oramorph SR was another
18 controlled substance.

19 Q. What does Roxanol do?

20 A. Again, Roxanol is in the pain
21 management line.

22 So I guess regarding on the acuteness

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1 important.

2 Q. What's your understanding of why they
3 would have looked at that difference between the
4 contract price and the AWP?

5 A. Contract prices and WAC prices and AWP
6 are commonly listed prices in our pricing
7 communications.

8 So she could have looked at the AWP
9 again as a reference point to however she's
10 reimbursed.

11 Q. Well, was it your understanding at this
12 time that this customer would have been
13 reimbursed by, let's say Medicaid program, some
14 Medicaid programs, based on that AWP?

15 A. I had no knowledge of the mix of
16 business and payors for Safeway/Vons.

17 Q. Is Safeway/Vons a national company?

18 A. It's a national company, yes.

19 Q. Did you understand at the time that
20 they were also a Medicaid provider?

21 A. It wasn't something that came up in our
22 conversations. If you had asked me do they

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1 service Medicaid patients, yes.

2 Q. Do you know whether or not Mr. Feldman
3 approved your proposal to pay \$400,000 to
4 Safeway/Vons in order to get the business?

5 MS. EATHERTON: Objection,
6 mischaracterizes prior testimony.

7 MS. OBEREMBT: No, actually it doesn't.
8 But you can answer the question.

9 THE WITNESS: I don't remember whether
10 he approved or not. I remember we did not get
11 the business.

12 BY MS. OBEREMBT:

13 Q. Do you remember any conversation with
14 him about this?

15 A. I don't.

16 I see here, you know, references to
17 Maui, and I think I was there at a sales meeting.

18 But no, I really don't recall a direct
19 conversation with Rich about securing this
20 business.

21 Q. Did you get in trouble for not securing
22 this business?

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1 what's your understanding of why Ms. Waterer
2 would have sent you this e-mail?

3 A. Probably because it was related to
4 Bergen.

5 Q. Is Mary Lowe here discussing a spread?

6 A. Within the AWP and WAC, there is a
7 spread that's listed.

8 Q. Does the text of the e-mail state that
9 she's going to tell someone about the larger
10 spread the next time she talks to him?

11 A. The text states "Will tell him about
12 the larger spread next time I talk to him."

13 Q. Does it appear to you that she's
14 talking about discussing this with the
15 pharmacist?

16 A. She states prior to that "Pharmacy was
17 on auto sub."

18 So that would lead me to believe, yes.

19 Q. Have you ever heard of the term
20 "spread" in the pharmaceutical context?

21 A. I've heard the term "spread" in the
22 pharmaceutical context.

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1 A. -- would be worth noting here.

2 Q. Sure.

3 A. The pharmacist says he's frustrated
4 that every month or so he gets a different
5 product from Bergen.

6 Do you know what that means? It means
7 that when there are a number of generics out
8 there available and that pharmacist is getting
9 different products, he's getting different sizes
10 and colors of tablets because there's different
11 generic competitors out there.

12 And patients, that tends to bring
13 questions from patients because they think
14 they're getting a different medication, when
15 they're getting the same.

16 That's pretty important to note that
17 that's a key benefit, if you say with one
18 recognized product you get consistency there.

19 Q. Thank you. That was helpful to clarify
20 that.

21 It sounds as if though that the person
22 who wrote the e-mail, Mary Lowe, was going to go

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1 talk to him mainly about the spread the next
2 time, not about the benefits of having one
3 particular drug.

4 Is that a fair interpretation of the e-
5 mail?

6 A. It's a fair interpretation that that
7 was going to be part of her conversation, that he
8 was frustrated.

9 Q. And that the other part of the
10 conversation was going to be about spread; is
11 that right?

12 A. Part of that conversation would be
13 about spread.

14 MS. OBEREMBT: I'd like the Court
15 Reporter to mark as Exhibit No. 8 an e-mail chain
16 that is dated March 12, 1999, at the top. And
17 the Bates numbers are ROX037-4711 through 4713.

18 (Deposition Exhibit Carr-Hall 008
19 was marked for identification.)

20 BY MS. OBEREMBT:

21 Q. Mr. Carr-Hall, let me know when you've
22 finished reading the e-mail. (Document tendered

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1 A F T E R N O O N S E S S I O N

2

3 THE VIDEOGRAPHER: We are back on the
4 record at 1:25 p.m.

5

6 COLIN CARR-HALL,
7 having been previously duly sworn, was examined
8 and testified further as follows:

9

10 EXAMINATION (Continuing)

11 BY MS. OBEREMBT:

12 Q. Mr. Carr-Hall, do you understand that
13 you're still under oath here?

14 A. I do.

15 Q. We're going to focus on Oramorph and
16 your activities with respect to Oramorph.

17 Could you remind me again, is Oramorph
18 one of the pain killing products?

19 A. Oramorph is one of the pain killing
20 products.

21 Q. Who was Roxane's main competition in
22 selling Oramorph?

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1 A. MS Contin.

2 Q. Who makes MS Contin?

3 A. Perdue Frederick.

4 Q. Was that a pretty intense competition
5 between the two companies with regard to selling
6 the drug?

7 A. I view all competition as intense.

8 Q. So you'd say that the competition
9 between Roxane and Perdue Frederick was intense
10 competition for the sale of the drug?

11 A. Yes.

12 Q. Was MS Contin the brand drug in the
13 competition?

14 A. MS Contin is a brand name drug, yes.

15 Q. Was Oramorph a generic drug?

16 A. That's where I'm not sure. It could be
17 a branded generic or it might just be considered
18 a brand.

19 I'm not certain on that designation.

20 Q. I think you said before that Bergen
21 Brunswig was one of your customers; is that
22 right?

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1 Q. Is it logical to assume that RDs does
2 refer to individuals who were going to be selling
3 to retail pharmacies?

4 A. It is logical to assume that, yes.

5 Q. Is that what you would assume from
6 reading your own write-up here?

7 A. Yes. From reading this, yes.

8 Q. What do you mean when you say "I am
9 providing targeting lists for Prescription For
10 Profit members"?

11 A. Prescription For Profit members are
12 retail pharmacies who are in the program.

13 So since they're involved in that
14 program, I'm making the district manager and the
15 sales reps aware of that.

16 Q. So you're trying to assist their
17 selling efforts in connection with Oramorph SR
18 with retail pharmacies; is that right?

19 A. That sounds correct.

20 Q. Well, do you think it is correct?

21 A. Yes, that's correct.

22 MS. OBEREMBT: I'd like to mark as

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1 Exhibit 16 a document entitled National Accounts
2 Monthly Report May 1998, and the Bates number is
3 ROX057-1006 through 1015.

4 (Deposition Exhibit Carr-Hall 016
5 was marked for identification.)

6 BY MS. OBEREMBT:

7 Q. Does this appear to be another one of
8 these monthly reports that we discussed earlier?
9 (Document tendered to the witness.)

10 A. Yes.

11 Q. Would you turn to Bates Page 1011, also
12 known as 19716?

13 Do you see an entry with your name
14 underneath the Wholesale category?

15 A. I see two entries.

16 Q. Do you see an entry with your name that
17 has the word Bergen after your name?

18 A. I do.

19 Q. Could you read that to yourself,
20 please?

21 Is there a reference to a Sharon Storck
22 in your write-up here?

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1 A. There is.

2 Q. Who is Sharon Storck?

3 A. I vaguely remember she's in inside
4 sales or telemarketing.

5 Q. What is inside sales or telemarketing?

6 A. It was a group of folks used to follow
7 up with pharmacy accounts that our sales force
8 couldn't necessarily reach because we were so
9 small and there are so many pharmacies.

10 And they may have had a host of other
11 responsibilities as well.

12 Q. But as far as you know, they did try to
13 sell to retail pharmacies; is that right?

14 A. They created awareness, yes.

15 Q. Is creating awareness trying to sell --

16 A. I'm sorry. Yes, creating awareness,
17 trying to sell.

18 Q. And it's trying to sell Roxane's
19 products; right?

20 A. Yes.

21 Q. The last sentence there refers to you
22 forwarding a "full package of membership and

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1 contract pricing/AWP spread benefits for inside
2 sales to capitalize on"; is that right?

3 A. According to this, that is correct.

4 Q. What does that mean?

5 A. That, again, I would assume we're
6 talking about Prescription For Profit members,
7 and it was to call those members to let them know
8 that contract prices were loaded into their
9 program and that there are spread benefits for
10 them that they could capitalize on.

11 Q. By "spread benefits" did you mean that
12 there was a difference between the AWP and the
13 contract price and the customer would make more
14 money if they used the Oramorph drug as opposed
15 to a competitor's drug?

16 A. That's my understanding, that with a
17 contract price and AWP that's what the spread
18 would equate to.

19 Q. Would it be your assumption that Sharon
20 Storck used the package that you forwarded in her
21 inside sales?

22 A. If she carried through with this

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1 initiative, yes.

2 Q. Would you have expected her to carry
3 through with this initiative?

4 A. Yes.

5 MS. OBEREMBT: I'd like to mark as
6 Exhibit 17 a document entitled National Accounts
7 Monthly Report June 1998, and the Bates number is
8 BOEH01046677 through 46685.

9 (Deposition Exhibit Carr-Hall 017
10 was marked for identification.)

11 BY MS. OBEREMBT:

12 Q. Does this appear to be another one of
13 the monthly reports that we discussed? (Document
14 tendered to the witness.)

15 A. Yes, it does.

16 Q. Would you turn to Page 682, also known
17 as 19348, please?

18 A. Yes.

19 Q. Do you see your name under the
20 Wholesale category with the word Bergen next to
21 it?

22 A. Yes, I do.

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1 Q. Why don't you take a minute and read
2 that, please.

3 Does it appear that you followed
4 through on the plan that you had sketched out in
5 your May 1998 report as to putting together a
6 package?

7 A. As to putting together a package, it
8 does.

9 Q. Did the package include a "spread
10 analysis grid of the incremental profit
11 pharmacists can realize if they are paying WAC
12 for MS Contin"?

13 A. That's what it states here.

14 Q. Do you believe that's what you would
15 have done based on your earlier testimony that
16 you typically provided accurate information in
17 these reports?

18 A. Yes.

19 Q. Now, it appears there was a glitch with
20 the inside sales effort; is that right?

21 A. It looks like it, yes.

22 Q. Does it appear that the inside sales

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1 folks weren't going to be promoting Oramorph SR?

2 A. Correct.

3 Q. So what did you do instead?

4 A. Reading this, I rolled it out to Glen
5 Burkett, who I earlier mentioned was a district
6 sales manager, for his people to use. That would
7 be then making physical calls versus
8 telemarketing.

9 Q. Was he a district manager or a regional
10 manager?

11 A. I think he was a district manager.

12 Q. But the idea was that his salespeople
13 were going to be calling on retail pharmacies
14 using the spread analysis grid that you had put
15 together; is that right?

16 A. That's what the intent when I rolled
17 this out to Glen was.

18 Q. And is it your expectation that his
19 salespeople would have used what you had
20 provided?

21 A. It is my expectation, yes.

22 Q. And the purpose of the spread analysis

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1 here was to show the pharmacists that they could
2 make more money supplying the Oramorph than they
3 could supplying the competitor's drug; is that
4 right?

5 A. Yes.

6 MS. OBEREMBT: I'd like to mark as
7 Exhibit 18 a National Accounts Monthly Report
8 dated September 1998 with a Bates number of
9 BOEH01050859 through 581100. Let me correct
10 that. It's through 50859 through 51882.

11 (Deposition Exhibit Carr-Hall 018
12 was marked for identification.)

13 BY MS. OBEREMBT:

14 Q. Does this appear to be another monthly
15 national accounts report? (Document tendered to
16 the witness.)

17 A. Yes, it does.

18 Q. Could you turn to Bates Page 1050863,
19 please?

20 Do you see an entry under the subtitle
21 Wholesale with your name followed by Bergen?

22 A. Several entries.

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1 you did sell Azathioprine as part of the products
2 you sold?

3 A. Azathioprine was part of the products I
4 sold.

5 Q. Do you ever remember anybody at Roxane
6 raising an issue with Azathioprine AWP's that they
7 were too low in comparison to the competition's
8 AWP's?

9 A. I don't recall an issue being raised.
10 You know, I might have seen from
11 yesterday, I might have seen a document around
12 that.

13 Q. Let's go over the documents and see --

14 A. Okay.

15 Q. -- what they mean and what you recall.

16 MS. OBEREMBT: I'd like to mark as
17 Exhibit No. 26 a National Accounts Monthly Report
18 dated December 1998, and the Bates is
19 BOEH01046832 - 46837.

20 (Deposition Exhibit Carr-Hall 026
21 was marked for identification.)

22 BY MS. OBEREMBT:

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1 Q. Does this appear to be another one of
2 these monthly reports for national accounts?
3 (Document tendered to the witness.)

4 A. It does.

5 Q. Would you look at the entry under Penny
6 Hawthorne's name on the first page of Exhibit 26?

7 A. Uh-huh.

8 Q. Do you see a reference in parentheses
9 there to Sykora?

10 A. I do.

11 Q. Did Mr. Sykora sometimes add comments
12 to what a national account manager was reporting
13 in on the monthly report?

14 A. According to this, I would say that
15 yes, he did in this instance.

16 Q. So you assume that's what that means
17 there, the reference to Sykora and then the
18 comment that follows that, that that's a comment
19 made by Mr. Sykora on the report?

20 A. Yes.

21 Q. How do you interpret the comment that
22 he's making here?

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1 A. Okay. So from what he's gathering,
2 there are the two most common complaints, a lower
3 than usual generic substitution rate. So that
4 he's talking about from the brand, and, again, I
5 think it's Imuran, from the brand to
6 Azathioprine. And too small a spread between AWP
7 and price on Azathioprine and too small a spread
8 between Imuran WAC and Azathioprine WAC. Okay.

9 Q. So the first spread he's referring to
10 is the difference between reimbursement based on
11 AWP and the actual price a pharmacy pays; is that
12 right?

13 A. Yes, small spread between AWP and price
14 on Azathioprine.

15 MS. OBEREMBT: I'd like to mark as
16 Exhibit No. 27 a series of pages Bates marked
17 ROX064-5213, ROX035-0728, and ROX035-0729.

18 (Deposition Exhibit Carr-Hall 027
19 was marked for identification.)

20 BY MS. OBEREMBT:

21 Q. Let me know when you're done looking
22 through the exhibit. (Document tendered to the

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1 sales price. It's something that I've never
2 referenced.

3 Q. Can you go in and access average
4 contract price on a product you're selling?

5 A. I now can go in, I can't access an
6 average contract price, but I can now go in and
7 see certain prices for certain contracts for
8 certain buying groups.

9 MS. EATHERTON: I just want to object
10 for the record to any questions about BIPI's
11 particular practices because it's Roxane's
12 practices and drugs that are at issue in this
13 case.

14 So I just want to put that on the
15 record.

16 BY MS. OBEREMBT:

17 Q. Why don't we go back.

18 You said that you began working for
19 BIPI in December of 2000; is that right?

20 A. I transitioned from Roxane to the
21 Boehringer sales force.

22 Q. What prompted that?

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1 A. I didn't want to work for the person
2 who would be my new boss at Roxane.

3 Q. Who was that going to be?

4 A. Karen Strayla.

5 Q. And why was she going to be your new
6 boss at Roxane?

7 A. Because Bob Sykora was moving over to
8 BIPI, and that created an opening.

9 Q. So what did you do?

10 A. I approached my boss or my boss' boss,
11 Rich Feldman, and let him know of my desire to
12 move to Boehringer.

13 Q. And what position did you take with
14 BIPI?

15 A. National account director.

16 Q. Did you keep the same accounts you had
17 before?

18 A. Most of them. There were some changes.

19 Q. Were you selling the same drugs you
20 were selling before?

21 A. No. The Roxane products were of course
22 not on. So I didn't promote Roxane products.

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1 acronym I believe is called Committed Provider
2 Services.

3 Q. Was this a document that was drafted by
4 you?

5 A. I would say yes.

6 Q. Would you turn to Page 3 of the
7 document, which is Bates Page 1046411?

8 A. I'm there.

9 Q. Do you see the reference to Medicaid
10 reimbursement?

11 A. "What are the potential Medicaid and
12 other ramifications for having a single multi-
13 source price for all trade classes."

14 Q. And also do you see above that the
15 reference to Medicaid reimbursement?

16 A. "Are we in all state Medicaid
17 programs."

18 Q. Right.

19 Was that important to Roxane, to have
20 its drugs be covered by state Medicaid programs?

21 A. I would say that it would be important.
22 I don't know about all state Medicaid

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1 programs, but Medicaid was a component of the
2 payors.

3 Q. So Roxane wanted to have its drugs
4 included for coverage in the Medicaid programs.
5 Is that fair to say?

6 A. That's fair to say.

7 Q. And does the same hold true for having
8 their drugs, to the extent it was possible, be
9 covered by the Medicare program?

10 A. That's fair to say.

11 Q. Did you ever create something called
12 the C2 organizer?

13 A. Yes, I did.

14 Q. And what is that?

15 A. What that was was that DEA narcotic
16 forms need to be filled out when you're ordering
17 Class II drugs.

18 So other than just sending a purchase
19 order, you couldn't do that, you had to also fill
20 out this special form as a wholesaler, and it
21 goes actually as well down the chain when a
22 pharmacy buys Class II drugs they also have to

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